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In The

Supreme Court of the United States

October Term, 1981

CHECKRITE PETROLEUM INC.,

Petitioner,

vs.

AMOCO OIL COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

I. Is the ultimate criteria, *the congressional intent* or shall a literal reading of specified words in the PMPA, be the deciding factor in the construction and interpretation of the PMPA and its application to the case at bar and all future cases involving the PMPA? This was a case of first impression in both the district and circuit court, and now this Court.

There being no conflict between the legislative history and the district court's construction, does this not require that the congressional intent, rather than a strict literal construction prevail?

Petitioner asserts the former position.

II. Shall the criteria for construction of the PMPA be that of the circuit court, in this case, or that of the same circuit court in *Central Hanover Bank & Trust Co. v. Commr. of Internal Revenue,* 159 F.2d 167, 169, *cert. denied,* 331 U.S. 836 — the two opinions being in apparent conflict?

Petitioner asserts the latter position.

III. Is PMPA a statutory codification of an equitable principle, and should an equitable interpretation follow?

The PMPA is not derogatory of the common law and does not require a strict construction. Petitioner asserts the affirmative.

IV. Has the circuit court failed to fully take into account petitioner's true position (the facts not being controverted) in the marketing of petroleum products and the interdependent tri-party arrangement in such marketing involving respondent, the dealers and petitioner?

And was petitioner's function (rather than how he was named by respondent), which was found to be akin to that of a distributor and a jobber, taken into account by the circuit court?

Petitioner asserts that it has not, and had it done so, it should have affirmed the district court's judgment.

PARTIES BELOW

The list of the parties to the proceedings in the court whose judgment is sought to be reviewed is as per the caption in this petition.

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No.

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October Term, 1981

CHECKRITE PETROLEUM, INC.,

Petitioner,

vs.

AMOCO OIL COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner Checkrite Petroleum, Inc. prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Second Circuit, entered in these proceedings on April 1, 1982, reversing the opinion and judgment of the district court.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Second Circuit and the United States District Court, Southern District of New York are reproduced in the appendix, *infra.*

JURISDICTION

The judgment sought to be reviewed was entered on April 1, 1982.

The statutory provision conferring jurisdiction to entertain this writ of certiorari and/or to review the judgment is 28 U.S.C.A. §1254.

The original action was instituted in the United States District Court for the Southern District of New York pursuant to and under the Petroleum Marketing Practices Act, 15 U.S.C. §2801, *et. seq.*

STATUTE INVOLVED

The statute involved in this case is the Petroleum Marketing Practices Act, 15 U.S.C. §2801, *et seq.* and same appears, verbatim, in the appendix at pages 49a-75a.

STATEMENT OF THE CASE

A concise statement of the case and facts material to a consideration of the questions presented is herewith set forth.

No federal questions were raised nor need review.

The facts are in the main not contested, and the review does not seek a review of or the preponderance of questions of facts.

In consideration of petitioner dedicating gasoline service station sites already ongoing and fully equipped stations for the exclusive sale of Amoco fuel, Amoco agreed to pay certain commissions to petitioner. This was pursuant to written contract for a term of years.

The necessary precedents were that petitioner either own, have the dominant lease for a number of years to the gas station site, or in some cases from the dealer at the site a supply agreement requiring the dealer to purchase a brand of fuel nominated by the petitioner. As part thereof there usually were leases or subleases to the site for a period of years by petitioners to the dealers.

Having made the economic investment and risks, petitioner was in a position to, could and did, by contract with respondent, agree to nominate Amoco brand fuel to his dealers and have the dealers enter into dealer-equipment agreements with respondent, as required by respondent.

This agreement (a renewal of a previous one) had a provision concerning renegotiations and renewal of the contract. The agreement expired May 31, 1981.

Under the respondent's agreement with the dealers (dealer-equipment), respondent delivered the fuel to the dealer and was paid by the dealer. Petitioner received a fixed commission on fuel sold and paid for. The true relationship of petitioner and respondent is hereafter discussed.

However, as an inducement for a supply agreement, petitioner agreed to share a portion of its commissions with dealers. This became a material economic factor to a dealer. It was Amoco's policy to pay no commissions to dealers.

The agreement between *respondent and the petitioner* reads:

> "17. It is mutually agreed between the parties that the Amoco-Dealer Sales Agreements cited in ¶1 hereof, shall contain the following clause:-

> 'This agreement shall terminate automatically in the event that the agreement of March 31, 1976 between Amoco and Checkrite Petroleum Corp. as same may be extended or modified, is terminated for any reason.' "

The above clause actually became a part of the dealer-equipment agreement between Amoco and the dealers.

The petitioner's contract with respondent also prohibited petitioner from self-operating any station and a breach results in the loss of commissions.

Respondent refused to renegotiate a renewal or to renew the contract. Instead it sent a letter stating that it "decided that it does not wish to extend, renew or enter into a new agreement" after the expiration of the last agreement.

This PMPA proceeding was instituted for PMPA protection against the non-renewal and termination by respondent.

The exact relationship between petitioner and a given dealer was subject to change, and in the five years preceding the termination, there were changes in the fee ownership, and in the *dominant* lease position, etc. of petitioner. Changes back to the original situations, in the future, are part and parcel of the business engaged in by petitioner. In fact, respondents pre termination intent by refusing to consider new stations to be added which petitioner owned or could acquire, in part resulted in petitioner not owning station sites in fee at termination (165a, 181a-188a).

At the time of this proceeding, petitioner held some leases but in all cases had effective and unexpired supply agreements enabling it to nominate the brand gas to be sold, and the district

court held that "the power to demand that the station operators cease using Amoco products and to change the colors of their stations to another brand gives Checkrite a power which in law and economic theory is generally held by the station operator or dealer himself."

The circuit court's decision gave no consideration to petitioner's economic stake or continuing liability on any leases. The decision likewise ignored petitioner's rights under the supply agreements.

At the hearing in the district court, in commenting on Amoco's offer to the dealers, the court found:

> "Amoco's offer in this case to release these operators from their contracts with Amoco, would, if accepted, effectively terminate the franchise relationship between Amoco and the operators, and would be accomplished by Amoco without compliance with the P.M.P.A."

Later, Amoco, veered from a release to an acknowledgment that it has an obligation to the dealers. This, in turn caused the circuit court to remark (we think, unfortunately) "The dealers are threatened only by Checkrite. That Checkrite might take action detrimental to dealers certainly does not provide Checkrite with rights against Amoco under the P.M.P.A."

The statement, we submit, failed to recognize the economic dilemma in which the circuit court's holding placed petitioner, nor the full portent of the tri-party agreement, and that Amoco now could be left with all the exclusivity rights at the sites with no corresponding obligation.

In times of shortages, a situation in existence only two years ago, and which may return at any time, what good is a right under the supply agreement by petitioner to name another brand, when no gas is available to it, to nominate.

Nor would the right to nominate a no-brand gas which would also be *in short* supply, and which in turn would disenfranchise the dealer, the PMPA not being applicable to non-trademarked gas!

The structure of the petroleum retail system is that all the branded companies tend to form a cluster at nearly all large geographic centers in the city and Long Island where most gas is sold. Thus, the possibility of obtaining a supply of gas from a competing brand is nil, in that it is already represented in that geographic center.

The "good will" from the sales of a particular brand for years will be destroyed by a changeover.

The problem is made less soluble by the fact that major oil companies are not taking on new dealers and that "shortage" of supply, now or in the future does not bode for any success in obtaining an alternate supply.

Lastly, the circuit court, mistakenly took Amoco's acknowledgment that it would recognize the affected dealer's PMPA rights.

At the outset, as aforesaid, if petitioner is neither protected by PMPA nor has a burden of compliance therewith, it has no alternative but to nominate another gas, even a no-brand gas, to capitalize on its economic investment.

Did the PMPA intend to put the dealer in this jeopardy? We urge that the answer is NO, even if it were "equitable" to take away petitioner's property rights, which it was not.

And, suppose Amoco did in fact acknowledge the PMPA rights *of the dealers in this proceeding*, what about dealers similarly situated throughout the U.S.A.? What protection do they have in a situation similar to the one in this case? It should be recalled that the Amoco-Dealer agreements contained a proviso that the termination of the agreement with the "broker" terminates the agreement with the dealer as well.

Thus, the district court found — "that the inevitable practical effect of the termination by Amoco of its agreement with Checkrite will be the termination at the instance of Checkrite of the franchise relationship between Amoco and its operators."

Our PMPA proceeding claimed a termination of our agreement without a claim of a "just cause" for doing so, plus a termination notice that did not comply with the PMPA.

Amoco's defense admitted no just cause for termination and that its termination notice did not comply with the PMPA. Its position was that the word "brokers" is not used in the PMPA and that "broker" is akin to a person bringing two persons together for a commission and that petitioner was not one who ever had title to the fuel, hence it had no application to petitioner.

The district court rejected Amoco's position by a recital of the realistic and factual role played by petitioner in the distribution of petroleum and in the tri-party relationship already set forth at the outset of this statement of the case and facts.

It further found that:

1. "[T]he purpose Congress sought to serve in enacting PMPA would be served more fully if the definition of franchise under the PMPA were read to include persons or companies such as Checkrite, *who possess a significant part of the bundle of economic rights or powers characteristic of a 'franchise' marketing brand name motor fuel.*" (Emphasis added.)

2. The legislative history (referring to S. Rep. No. 95-731, 95th Cong. 2nd Sess. 30, reprinted in U.S. Code Cong & Ad. News, 873 *et seq.*, as well as 123 Cong. Rec. ____, H3013 *et seq.*, April 5, 1977 all of which appear in Judge Brieant's opinion of June 15, 1981) supports petitioner's contention in that though it

> "'does not *actually* sell, purchase or receive motor fuel, Congress did intend that the PMPA would accord broad protection to persons marketing branded fuels."

The word *actually* was thereafter elaborated upon (Section 5, below).

3. Petitioner was an independent entrepreneur, and cited from the House Committee's use of the phrase "independent entrepreneurs" involved in the distribution process and its desire that they be included as distributors.

4. The contracts among Amoco, Checkrite and the station operators clearly set forth *an agreement for the joint marketing by these companies,* or individuals, of branded fuel.

5. That, based on Rep. Dingell's remarks (123 Cong. Rec. ____, H. 3013 *et seq.*, April 5, 1977) and previous findings, the district court found:

". . .in enacting PMPA, Congress did not intend to protect only those persons who literally take formal title to or consignment of motor fuel, but all those independent entrepreneurs who market branded motor fuel on behalf of oil companies."

6. Said the district court:

"[F]or various reasons, the business relationships by which any product, including motor fuel, is brought to market will comprise infinite variations in the legal forms used. Labeling an independent entrepreneur as a 'broker' particularly when the labeling takes place in a contract drawn by the opposite party, does not make the independent entrepreneur a broker. . . ."

"[C]onsideration must be given to the totality of the economic bundle of rights and powers which the party whose status is being considered possesses. The economic function performed by Checkrite was to assemble a group of stations, and to assure that the refiner's brand would be displayed and its products sold at the stations, and that the refiner's leased equipment would be protected against vandalism. This in turn required Checkrite to acquire ownership of the real property or control through long term leases, and thereafter to lease or sub-lease the eleven properties to station operators who would hire employees and man the pumps. For this service. . . *Checkrite earned a profit or economic rent,* paid *in this instance by the refiner, but ultimately passed along to the consumer. The same economic result could have been received by Checkrite if it had purchased the*

> *motor fuel or accepted it on consignment from Amoco, and then resold the product to its sub-tenants. It was not necessary for Checkrite* to resell product in order to accomplish its economic purpose. Indeed, it was more practical to have the station operators buy the motor fuel directly from Amoco." (Emphasis added.)

The paragraph (immediately above) is consistent with the oral argument made in the district court, viz: the "difference" between a "distributor" which respondent claims petitioner is not, and a "broker" which it claims petitioner is, is more theoretical than actual.

At the hearing in the district court, the court was apprised that in a dealer-distributor-major oil company situation, the dealer most often orders his requirements direct to the major oil company and pays upon delivery to the major oil company, even though the distributor has agreed to buy and pay the major oil company. It evolves into a bookkeeping situation; the major oil company collecting from the dealer both its charge and the distributor's commission, then bills the distributor for the delivery, and credits him with the collection, and lastly remits the commission. In the case at bar, essentially, the same has taken place (District Court Docket Entry 13 of 5/19/80; 2a).

In each case it is the control of the gas station sites which each has to offer and which the major oil company bargains for, leaving the economic cost of the sites to the "broker" or "distributor."

> "There are numerous other factors affecting the choice of legal form, including comparative cost of insurance, the risk of theft or loss, and the necessity to supervise. . . but viewed as an

economic reality, the position of Checkrite in this relationship is almost identical to that of a jobber, who has a captive group of station operators pledged to it by contract to sell whatever brand of motor fuel it designates, and who supplies the captive stations with the product which it in turn buys from the refiner; clearly the jobber is protected by the PMPA. *The difference in legal form between Checkrite's operation and that of the typical or traditional petroleum jobber bears no direct relationship in the economic realities. The economic realities make Checkrite a jobber.*" (Emphasis added.)

7. The district court concluded:

"... based on the relevant legislative history of PMPA that Checkrite is a 'franchisee' under the PMPA. Furthermore, the Court concludes that the contract between Amoco and Checkrite is a 'franchise' as defined in the PMPA because the contract is one between a refiner, Amoco, and a 'distributor', Checkrite, under which the refiner authorized the distributor to use the refiner's trademark at its leased stations in connection with the sale, consignment or distribution of motor fuel, the Court so finds because the contract directs Checkrite to obtain dealers to sell branded Amoco motor fuel."

Thus, petitioner was an arm in the distribution process, and a co-distributor with Amoco, in short, a distributor both in fact and function.

REASONS FOR GRANTING THE WRIT

The reasons relied upon for the allowance of this writ are:

1. A review of the PMPA by this Court will be one of first impression as it was in the district and circuit courts of appeals.

2. The case involves the question whether PMPA was enacted to protect the right of the public, and all those directly involved in the marketing of petroleum, including dealers and petitioner, and the need for a fullsome interpretation to carry out the congressional intent, or, shall the PMPA be construed to exclude, thus emasculating such intent.

3. The issue in this case and the decisions is of immense importance to the entire petroleum industry and to the rights of the participants therein which may be curtailed or eliminated by said decision.

4. Matters involving the PMPA pend in most district courts in the country. Some may be pending in circuit courts. A decision by this Court, especially pertaining to the proper interpretation of the PMPA, will prove very helpful to all inferior courts.

5. One of the issues in this case is whether the ultimate criteria is the congressional intent, or shall the literal reading of specified words be the criteria in the interpretation of legislation, in this case, and in all future cases decided under the PMPA.

6. An apparent conflict exists in the proper interpretation of legislation by the circuit court in this case and that in *Central Hanover Bank & Trust Co. v. Commr. of Internal Revenue,* 159 F.2d 167 at 169 (Judge Learned Hand) (2nd Cir. 1947), *cert. denied,* 331 U.S. 836, and the conflict should be resolved by this Court.

I.

The ultimate question in legislative construction is: congressional intent. It is to be gathered from the statutory scheme that Congress enacted into law.

Can the full congressional intent be gathered from language alone? Or in the absence of persuasive reasons in the legislation itself to the contrary, would it not be sterile, unduly sterile, not to find the congressional intent?

Congressional intent finding does not involve redefining words; rather it is giving a fullsome meaning not to a single word, but to all words taken as a whole.

We submit that a consideration of the whole of PMPA is required:

> "The whole may be greater than the sum of its parts." (Mr. Justice Holmes, *Union Pacific R.R. v. Hadley,* 246 U.S. 330, 332).
>
> "By dissecting the act bit by bit and casting off vital parts, the Court fails to recognize that the whole of the act is greater than the sum of its parts." (Mr. Justice Burger, *Buckley v. Valco, Secy. of the U.S. Senate,* 424 U.S. 1, 235).

The prior history and cases are consistent with the opinion of the district court, which should be reinstated.

In Point II appears our argument that the PMPA is essentially legislation of an equitable nature and should receive an equitable interpretation.

The circuit court cited *Lewis v. United States*, 445 U.S. 55 at 60; *Consumers Products v. GTE Sylvania*, 447 U.S. 102 at 108; *Caminetti v. United States*, 242 U.S. 470 at 474 and *Bd. of Education v. Harris*, 622 F.2d 599 for the proposition that (a) construction has for its starting point, the language of the statute; (b) the clearly expressed legislative intent is to be found and (c) when words are free from doubt, they must be taken as the final expression.

The district court's reasoning embraced (a) and (b) above, but stated that after refraining from redefining words, that the entire process would be a sterile statutory analysis if it failed or refused to consider the congressional purpose citing *Touche Ross v. Reddington*, 442 U.S. 560 at 565; *Chapman v. Houston Welfare*, 441 U.S. 600 at 608 and *Central Hanover Bank v. Commr. of Internal Revenue*, 159 F.2d 167 (2nd Cir.), *cert. denied*, 331 U.S. 836.

It appears that the circuit court's opinion is based on three decisions in the United States Supreme Court, one of which is *Touche Ross v. Reddington*, 442 U.S. 560 (upon which both the circuit courts and district courts rely) and the other two are *Reiter v. Sonotone*, 442 U.S. 330 and *Southeastern Comm. College v. Davis*, 442 U.S. 397.

We submit that *Touche Ross*, and its doctrine that

> "The ultimate question is one of Congressional intent"

should prevail and it should be determinative of our case.

The holding is wholly consistent with *Central Hanover Bank v. Commr. of Internal Revenue*, 159 F.2d 167, and thus the

opinion of the circuit court in this case is inconsistent with the two cases.

In our view, we read *Southeastern Community College* which after reciting that the starting point in construction is the language of the statute, then went on to show that the Court looked for and found the congressional intent, and found it to be sweeping rather than restrictive; it considered the overall intent rather than a single word, sentence or proviso.

We read *Reiter v. Sonotone, supra,* as enunciating that where the legislative history demands no "exclusionary scope" to a word, phrase or sentence, then a non-strict or non-literal construction consonant with the legislative intent is proper (442 U.S. 330 at 342-3).

Thus, in construing the phrase "injured in his business or property" (§4 Clayton Act), despite earlier court interpretations that it did not include a consumer, this court found no legislative history requiring the non-inclusion of a consumer.

The above, we deem, not to be differentiable from giving a better and in-depth meaning to the words "franchisor and franchisee" and to put a functioning meaning to "distributor", one that includes persons having the "trappings" of a "distributor" and being an integral part of the marketing process so that he will have the obligations of the PMPA and the correlative rights.

While not determinative or conclusive upon this Court, but in our view representative of legal thinking, giving support to the district court's expository remarks and decision, and to the soundness of Judge Learned Hand's opinion in *Central Hanover Bank v. Commr. of Internal Revenue, supra,* is the following:

The Fifth Circuit, in *A.J. Batterton v. United States*, 406 F.2d 247, held that the *circuit court has the power to construe a statute contrary to its literal language to achieve the true interest of Congress.*

Judge Blumenfeld (Conn.) in *In re Master Key Anti-Trust Litigation*, in 53 F.R.D. 87 (1971), at 89 commented very favorably, upon the "oft cited guidelines, laid down by Judge Learned Hand" in *Central Hanover Bank, supra,* to arrive at an interpretation.

A whole line of cases in the Court of Appeals of New York have reaffirmed Judge Hand's opinion concerning guidelines for construction in *Central Hanover Bank,* to wit;- *Abbod v. Hospital Ambulance,* 30 N.Y. 2d 295 at 298; *Matter of Kosek,* 31 N.Y. 2d 475 at 484-5; *Matter of Johnson,* 32 A.D. 2d 239 at 244.

Judge Hand on another occasion "cautioned that we be wary of making a fortress out of the dictionary." *Cabell v. Markham,* 148 F.2d 737 at 739.

This Court in *Towne v. Eisner,* 245 U.S. 418 at 425, stated:

> "a word. . . may vary greatly in color and content, depending upon the intention of its author and the circumstance under which it is used."

In summation, then, we submit that the function of Checkrite in the marketing system, the economic investment provided by Checkrite, the fact that Checkrite controlled the sites through (1) fee ownership; (2) being the dominant lessee; or (3) through supply agreements with the dealers, the sites, the use to which Amoco put petitioner's function to accomplish Amoco's aim of excluding competition from the sites, rendered Checkrite to be an essential cog in the distribution, and an arm of Amoco. To terminate

Checkrite no less than terminating a dealer, is inequitable to Checkrite, to the dealers and to the society as a whole.

It was to ameliorate this very situation that PMPA came into being; it is to effect this purpose that Checkrite is entitled to be covered, it being an essential cog in the industry.

II.

The PMPA is not in derogation of the common law.

It is a codification of an equitable principle, namely, the elimination of the unequal bargaining power of those engaged in the petroleum industry marketing system *vis-a-vis* the major oil company-refiners. The elimination of the vices inherent in these qualities and the harm to the public arising therefrom is its purpose.

The consolidation of courts of chancery with common law courts, and the right to plead equitable claims and defenses in one and the same pleading, has not displaced equitable legal precepts from the body of rules and remedies administered by courts of law, *i.e.*, the common law or codified law.

Common law and equitable principles are not one and the same (Pomeroy, *Equity Jurisprudence*, 5th Ed., Sections 16 and 40; *Bouvier Law Dictionary*.

"Conscience" and "morality" are some of the basic ingredients and are synonymous with equity (Pomeroy, *Equity Jurisprudence*, §§45, 56).

Thus, courts retain a certain power and freedom of action not possessed by courts of law, of adapting the doctrines he administers. It rests upon truths of morality rather than arbitrary customs and "rigid dogmas". This enables a court to extend these

doctrines to new relationship and shape the remedy to the new circumstance (Pomeroy, *Equity Jurisprudence*, §§59-60).

Thus, and importantly, when a legislative enactment is said to be "interpreted equitably", it means "according to the equity of the statute." (Pomeroy, *Equity Jurisprudence*, §45).

It is the application of equity to the interpretation of legislative enactments, and to enactments essentially equitable, that is involved in this case.

Put in another way, the intent and purpose of PMPA is to require the major oil companies to deal fairly and equitably with those through whom the marketing of fuel to the ultimate consumer is carried out.

The intent of Congress is clear. It was stated to be:

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> Central to the problems faced by franchisees in this regard is the disparity of bargaining power which exists between the franchisor and the franchisee. This disparity results in franchise agreements which some franchisees have argued amount to contracts of adhesion. The provisions of the contracts between the franchisor and the franchisee and the permeating influence of these contracts over nearly every major aspect of the franchisee's business may translate the original disparity of bargaining power into continuing vulnerability of the franchisee to the demands and actions of the franchisor.

> It is important to note that while the relationship of the parties to a motor fuel franchise agreement is basically contractual in nature, normal remedies for violations of the contractual provisions are often eschewed by the franchisor. The disparity of bargaining power which disadvantages the franchisee in negotiations leading to execution of the franchise agreement manifests itself in the contractually provided remedies for contract violations or changes in circumstances. Commonly the franchisor is able to capitalize on his disparity of bargaining power to obtain great flexibility with respect to his rights to terminate the contractual relationship. As a result, termination of franchise agreements during the term as a remedy for contract violations has been repeatedly utilized." U.S. Code Cong. & Ad. News (1978) at 876.

To the same effect, *Balder v. Standard Oil Co.*, 642 F.2d 107, 109 (5th Cir. 1981); 1981-1 Trade Cases, 91-63, 934 at 75,833).

Thus, we may conclude that the statute itself is a codification of equitable principles, and not in derogation of the common law.

We submit this was the view of this Court when it upheld the right of the New Jersey court to bottom the right of a gasoline dealer, to protection against inequitable termination by Shell Oil upon the basis, that it was against the public policy to permit termination that such right was not barred because the New Jersey statute (N.J.S.A. 56:10-5), was not enacted until after the dealers commenced his relationship with Shell Oil. *Shell Oil Co. v. Marinello,* (1973) 63 N.J. 403, 307 A. 2d 598, *cert. denied,* 415 U.S. 920.

Public policy in the sense it was used was nothing more than doing equity.

CONCLUSION

For the reasons assigned, a writ of certiorari should issue to review the opinion and judgment of the United States Court of Appeals for the Second Circuit and upon review, to reverse and direct the reinstatement of the district court's opinion and judgment with an additional direction that petitioner be given an opportunity to prove damages.

Respectfully submitted,

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